HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No.1349 of 2006

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Between:

K.S.S.Valli Saheb ……Appellant.

And

The Andhra Pradesh State Road Transport Corporation, represented by its Chairman and Managing Director, Hyderabad and another.

……
Respondents.

:: J U D G M E N T ::

Counsel for the appellant : Mrs.B.Malleswari

Counsel for the respondents : Sri V.Padmanabha Rao
for Sri P.Vinayaka Swamy

28th December, 2006

Per G.S. SINGHVI, C.J.

This appeal is directed against order dated 28-1-2004 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellant for issue of a mandamus to the respondents to give

him the benefit of continuity of service with full back wages and other consequential benefits.

A perusal of the record shows that while he was working as Conductor in Kurnool Depot of the Andhra Pradesh State Road Transport Corporation, a regular departmental enquiry was instituted against the appellant on six charges including the one casting adverse reflection on his integrity. The enquiry officer submitted the report with the finding that the charges levelled against the delinquent are proved. The competent authority accepted the enquiry report and issued notice dated 7-4-1975 to the appellant proposing his removal from service. After considering his reply, the competent authority passed order dated 31-7-1975, whereby he confirmed the proposed punishment. Industrial dispute raised by the appellant, which was registered as I.D.No.10 of 1991 resulted in the passing of award dated 3-9-1994, whereby Industrial Tribunal-cum-Labour Court, Anantapur approved the action taken by the employer. However, in the writ petition filed by him, which was registered as Writ Petition No.10442 of 1997, a Division Bench of this Court modified the order of punishment by ordering reinstatement of the appellant without back wages and continuity of service. The operative part of order dated 12-8-1997 passed by the Division Bench reads as under:

> "Perused the award. The approach of the Labour Court in holding the guilt of the petitioner-workman is quite correct and we are in agreement with its finding in this respect. However, we differ from the view taken by the Labour Court to impose the punishment of removal which we feel is severe and is not in consonance with the gravity of the offence. Hence, it needs to be modified to the one of reinstatement without back wages and without continuity of service. We, therefore, order reinstatement of the petitioner into service without back wages and without continuity of service."

In compliance of the direction given by the Division Bench, the appellant was taken back in service without the benefit of continuity of service and back wages.

The appellant did not challenge the order of the Division Bench by filing an appeal before the Supreme Court, but after a gap of almost seven years, he filed Writ Petition No.918 of 2004 for quashing the action of the respondents to appoint him as fresh Conductor and also for issue of a mandamus to them to give him the benefit of continuity of service and full back wages with all other attendant benefits.

The learned Single Judge dismissed the writ petition by observing that the same was wholly misconceived.

We have heard Mrs. B.Malleswari, learned counsel for the appellant and perused the record. We are in complete agreement with the learned Single Judge that the writ petition filed by the appellant was misconceived. Not only this, we are of the considered view that the appeal is a frivolous and vexatious piece of litigation, which deserves to be dismissed with exemplary costs.

Although we are not sitting in appeal over order dated 12-8-1997 passed by the coordinate bench in Writ Petition No.10442 of 1997, we cannot resist the temptation of observing that the direction given for reinstatement of the appellant was contrary to the settled law. By that time, the Supreme Court had consistently ruled that the High Court cannot lightly interfere with the discretion exercised by the employer to impose the particular punishment on the delinquent employee.

It is most unfortunate that instead of feeling satisfied with what could be termed as compassionate approach adopted by the High Court, the appellant tried to drag the respondents in litigation by

resurrecting his claim for back wages and continuity of service and that too after a gap of seven years.

In our opinion, the learned Single Judge did not commit any error by dismissing the writ petition. He could not have, in the face of order dated 12-8-1997 passed in Writ Petition No.10442 of 1997, directed the respondents to give to the appellant the benefit of continuity of service and back wages. Any such direction would have amounted to modification of the order passed by the Division Bench and this could not have been done by the learned Single Judge.

We are further of the view that the appellant, who took advantage of the order passed by the Division Bench and accepted the order of reinstatement, does not have the locus to seek a direction for regularisation of the intervening period and for payment of back wages.

With the above observations, the appeal is dismissed. For filing a frivolous appeal, the disposal of which has consumed substantial time of the Court, we saddle the appellant with costs of Rs.10,000/-. The amount of costs shall be deposited by him with the Andhra Pradesh State Legal Services Authority within a period of two months from today. The Member Secretary of the Andhra Pradesh State Legal Services Authority is directed to inform the Court in writing whether or not the appellant has deposited the amount of costs within the time specified in this order so that if it becomes necessary the Court may issue a direction for recovery of the amount from his salary.

As a sequel to dismissal of the appeal, WAMP.No.2861 of 2006 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, C.J.

28th December, 2006

C.V.NAGARJUNA REDDY, J.

Before the aforesaid judgment could be recorded and signed by us, Mrs. B.Malleswari, Advocate for the appellant appeared and prayed that his client may be permitted to withdraw the appeal.

Though unusual, we accept the request of the learned counsel because Sri V.Padmanabha Rao, learned counsel appearing for the respondents says that he does not have any objection.

In the result, the appeal is dismissed as withdrawn.

G.S.SINGHVI, C.J.

28th December, 2006

C.V.NAGARJUNA REDDY, J.

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